IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Bhanwarlal & Ors. v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.5592/1994
under Article 226 of the Constitution of India.

Date of Order : 2nd March, 2006

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.L.Purohit, for the petitioners.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

This petition for writ is arising from the second appeal preferred by the petitioners under Section 224 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as “the Act of 1955”) which was dismissed by Board of Revenue for Rajasthan, Ajmer by its judgment dated 14.11.1994.

The facts required to be noticed while adjudicating the instant petition for writ are that respondent No.7 Smt. Mohini Devi wife of Late Shri Parturam instituted a suit claiming declaration of khatedari rights in relation to land in dispute that was in cultivatory possession of Shri Hemaram (father

of petitioner). The suit was dismissed for want of prosecution by Assistant Collector, Sujangarh by an order dated 24.8.1976. The respondent No.5 who happens to be the youngest son of aforesaid Smt. Mohini Devi, for the cause which was subject matter of the suit referred above filed an another suit before the Assistant Collector, Sujangarh in the year 1980. The plaintiff respondent No.5 claimed that his grand father Hukmaram was khatedar tenant of the land in dispute and was shown as such in revenue records pertaining to the samvat year 2011-12, therefore, he sought declaration for himself with Smt. Mohini Devi and his brother Tilokaram as tenants of the land in dispute and also claimed for restoration of their possession with land in dispute by ejecting Shri Hemaram.

During pendency of suit Shri Hemaram died, therefore, the present petitioners being his legal representatives were substituted as defendants. A written statement to the plaint was filed by the defendants stating therein that they were having cultivatory possession over the land as khatedar tenant since samvat year 2001 and they also acquired khatedari rights in pursuant to the provisions of Section 15 of the Act of 1955 on its coming into force on 15.10.1955. The defendants also objected maintainability of suit being suffered by principles of resjudicata and also being barred by limitation.

The Assistant Collector, Sujangarh by judgment dated 30.4.1990 decreed the suit.

Being aggrieved by the same the petitioner defendants preferred an appeal before the Revenue Appellate Authority, Bikaner, that too came to be rejected by judgment dated 18.8.1990. The Revenue Appellate Authority, Bikaner while dealing with the objection of the petitioner defendants pertaining to limitation held that the plaintiff at the time of entering tenancy rights in favour of Hemaram was not born and being minor he was not in position to prefer the suit, as such he filed the suit in the year 1980 after gaining majority. The suit, therefore, could not be held barred by limitation.

A second appeal under Section 224 of the Act of 1955 was filed by the petitioner defendants before Board of Revenue giving challenge to the validity of judgment dated 18.8.1990 passed by Revenue Appellate Authority, Bikaner. The Board of Revenue by its judgment dated 8.1.1992 accepted the appeal by holding that the suit preferred by Ramchandra (respondent No.5) was barred by limitation. The Board of Revenue held that the limitation for filing suit for declaration is of 12 years, as such the limitation for filing the suit was running from the date the cause of action accrued to father of the petitioner when the land in dispute was possessed and tenancy rights were

entered in favour of Hemaram. The plaintiff born in the year 1961 and filed the suit in the year 1980 and then the suit was time barred.

The plaintiff respondents being aggrieved by judgment passed by Board of Revenue dated 8.1.1992 preferred a review petition under Section 229 of the Act of 1955 which came to be accepted by an order dated 19.11.1993. The second appeal, therefore, was heard afresh by Board of Revenue. The Board by its judgment dated 14.11.1994 rejected the second appeal and maintained the judgment and decree given by the trial court as affirmed by Revenue Appellate Authority by judgment dated 18.8.1990. The Board of Revenue while rejecting the appeal preferred by the petitioners held that the defendants petitioner came into possession over the land in samvat 2016. At the time of their coming into possession over the land the plaintiff was minor and, therefore, on becoming major in the year 1980 he filed the suit claiming his rights, as such the suit was not barred by limitation. Being aggrieved by the same, instant petition for writ is filed.

Before proceeding further it is relevant to mention here that nobody put in appearance on behalf of plaintiff respondent Shri Ramchandra and also on behalf of respondent No.6 Tilokaram and respondent No.7 Smt. Mohini Devi. Before hearing of case fresh

notice was given to them under an order dated 11.5.2002. The notices issued afresh too were served upon the respondents but they choose to remain unrepresented.

Heard counsel for the petitioners and also learned Deputy Government Advocate.

The contention of counsel for the petitioners is that the courts below failed to appreciate that the suit was barred by limitation and merely on the count that the petitioner was not born on the date cause of action arose to his grand father, cannot be a reason to extend the time prescribed for filing the suit. It is stated by counsel for the petitioners that even according to the respondents the petitioners became khatedar tenants of the land in dispute on 10.7.1959 and, therefore, the cause to act arose to them on 10.7.1959 and on that day grand father as well as father of the petitioner were alive. The limitation for filing suit was running against them which ultimately expired after a period of 12 years. The petitioner was born in the year 1961 (no specific date is given in the pleadings) and he filed the suit in the year 1980 i.e. after the lapse of limitation prescribed for filing suit. It is contended by counsel for the petitioners that the courts below erred while holding that the cause of action remain in currency for plaintiff respondent to file the suit being minor.

From the reading of orders passed by trial court, Revenue Appellate Authority and the Board of Revenue it is not at all in dispute that defendant plaintiff was not born on the date the petitioners acquired tenancy and also came into possession of the land in dispute. It is also not at all in dispute that at the time of entering Shri Hemaram (father of the petitioners) as khatedar tenant, father and grand father of the plaintiff were alive and they never objected the grant of tenancy to Hemaram. The cause of action to recover possession over the land and to get declared khatedar tenant with regard to land in dispute arose on 10.7.1959. The limitation for filing a suit for declaration is 12 years but after 10.7.1959 no claim was made by way of filing a suit by father of plaintiff or any of his brother in the period aforesaid. The mother of plaintiff at first instance in the year 1973 filed a suit for declaration which stood rejected for want of prosecution in the year 1976. After rejection of suit the plaintiff in the year 1980 filed the suit which is subject matter of present controversy. The suit on face was barred by limitation but the Revenue Appellate Authority held that the limitation for filing the suit was extended as the plaintiff was not born on the date the cause of action arose and for that reason he filed the suit on acquiring majority. There is no dispute that the plaintiff was not born on the day Shri Hemaram came

into possession of the land in dispute and tenancy was entered in his name in the revenue records. The cause of action arose to file the suit for father of the plaintiff prior to plaintiff's birth. The cause of action to recover possession which accrued in favour of father and brothers of the plaintiff could not have been extended qua the plaintiff on his birth. The plaintiff was having coparcenery rights with the rights of his father and brothers, therefore, it was for them to file the suit within limitation. The limitation to file suit was running against the plaintiff and in any event it could not be extended as the provisions of Section 6 of the Limitation Act are also not having any application in the present controversy being pertaining to extension of limitation for the persons who were minor at the time of coming into existence of cause of action. In the present case the petitioner was not even born on the date the cause of action came into existence, therefore, extension of limitation as prescribed under Section 6 of the Limitation Act can also not be applied.

In view of whatever discussed above, I am of the view that the suit at the time of its institution in the year 1980 was barred by limitation. The courts below erroneously considered the same within limitation. The suit, therefore, deserves to be rejected.

Accordingly, this petition for writ is allowed. The judgment impugned dated 14.11.1994 passed by Board of Revenue, dated 18.8.1990 passed by Revenue Appellate Authority, Bikaner and the judgment and decree dated 30.4.1990 passed by Assistant Collector, Sujangarh are hereby quashed. The suit filed by respondent plaintiff Ramchandra is dismissed.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.